

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P.(NPD) No.3174 of 2019
and C.M.P.No.20690 of 2019

B.J.Jayaraj

... Petitioner

Vs.

P.Manoharan

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the learned V Additional District Judge, Coimbatore, dated 17.07.2019 in I.A.No.516 of 2018 in O.S.No.450 of 2015, insofar as dismissing the condone delay application.

For Petitioner

: Mr.D.Parthasarathy

ORDER

This revision petition has been filed against the fair and decreetal order passed in I.A.No.516 of 2018 in O.S.No.450 of 2015 on the file of the V Additional District Judge, Coimbatore by order dated 17.07.2019.

2.Before the Trial Court, the respondent/plaintiff filed a suit for specific performance, wherein the revision petitioner/ defendant called absent

and set exparte on 02.03.2016 and thereby exparte decree was passed on 17.08.2016.

3. In the affidavit filed in support of this application, it has been stated that the revision petitioner was suffered with Jaundice and he was bedridden and therefore, he took treatment for a long time. Therefore, he was not able to approach the Court in time to file the application to set aside the exparte decree. After recovering from the illness, he filed I.A.No.516 of 2018 to condone the delay of 717 days in filing the petition to set aside the exparte decree and the same was dismissed by impugned order dated 17.7.2019, as against which, the present revision petition has been filed.

4. Heard Mr.D.Parthasarathy, learned counsel appearing for the revision petitioner, who would submit that unless this petition to condone delay is allowed and the exparte decree is set aside, the substantial right of the petitioner would be prejudiced. Since it is a suit for specific performance and exparte decree has been passed, it compels the revision petitioner/defendant to execute the sale deed in favour of the plaintiff.

5. Though notice had been served on the respondent and the learned counsel entered appearance, there is no representation on behalf of the respondent.

6. In the instant case, it is seen that due to health reasons, the revision petitioner could not file the application to set aside the ex parte decree and moreover by virtue of the ex parte decree, the valuable property right of the petitioner is at stake. Hence, this Court feels that the said delay can be condoned, of course, with some exemplary cost.

7. In view of the above, this Court is inclined to allow the Civil Revision Petition by setting aside the impugned order on a condition that the revision petitioner shall pay a sum of Rs.50,000/- (Rupees fifty thousand only) to and in favour of the respondent within a period of thirty days from the date of receipt of a copy of this order. It is made clear that if the said amount is not paid within the time stipulated, this order shall not confer any benefit to the revision petitioner and it is further made clear that no further extension of time will be granted to the revision petitioner to make the aforesaid costs to the respondent. The costs can be paid either through the learned counsel appearing for the respondent in this revision petition or to the learned counsel

appearing for the respondent/plaintiff in the lower Court or to the respondent directly by way of cash after getting due acknowledgment and receipt.

8. Accordingly, the revision petition is allowed. Consequently, connected miscellaneous petition is closed.

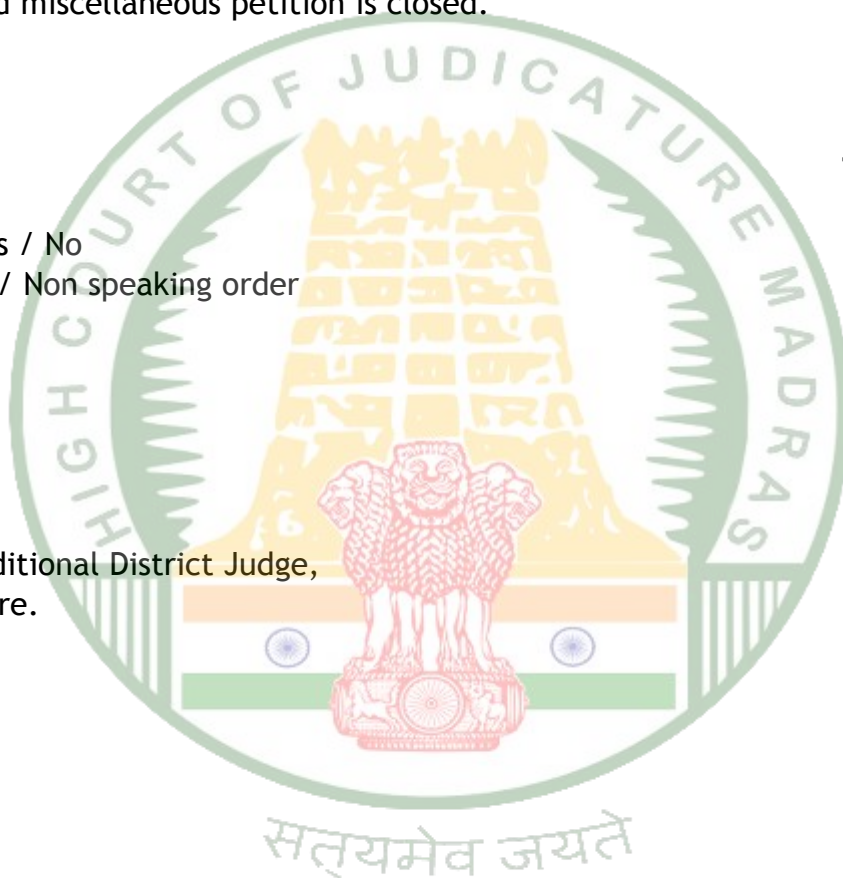
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Index: Yes / No
Speaking / Non speaking order

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To

The V Additional District Judge,
Coimbatore.

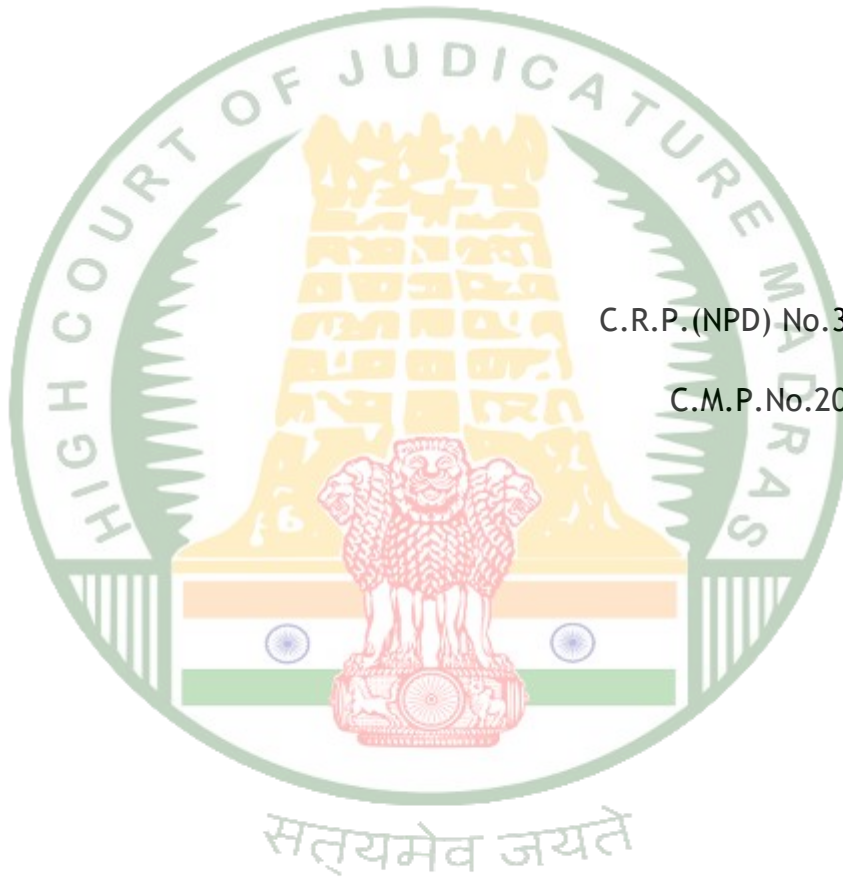


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R.SURESH KUMAR, J.

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